



# Department of Justice

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## **U.S. DEPARTMENT OF JUSTICE AND FEDERAL TRADE COMMISSION ISSUE REPORT ON COMPETITION IN THE REAL ESTATE BROKERAGE INDUSTRY**

### ***Agencies Make Recommendations to Maintain Competition and Protect Consumers From Anticompetitive Conduct***

WASHINGTON — The U.S. Department of Justice and the Federal Trade Commission (FTC) today issued a joint report, “Competition in the Real Estate Brokerage Industry.” The purpose of the report is to inform consumers and others involved in the industry about important competition issues involving residential real estate, including the impact of the Internet, the competitive structure of the real estate brokerage industry, and obstacles to a more competitive environment.

“The Antitrust Division seeks to educate industry participants and bring enforcement actions where necessary to ensure that consumers benefit from competition in this crucial sector of our economy,” said Thomas O. Barnett, Assistant Attorney General for the Department of Justice’s Antitrust Division. “This report will help inform Americans about their real estate brokerage options and alert state legislatures and real estate commissions about the danger of enacting laws and regulations that harm competition.”

The report follows a workshop conducted by the agencies in October 2005, entitled “Competition Policy and the Real Estate Industry.” The workshop focused on issues related to the competitiveness of the residential real estate industry and covered topics such as multiple listing services, online “virtual office Web sites,” discount and fee-for-service brokers, and minimum service requirements. Panelists at the workshop included real estate brokers, state regulators, and academics. In addition, nearly 400 public comments were filed in response to the agencies’ request for public comment in connection with the workshop.

“Home ownership is the American dream, and real estate brokers have helped to achieve that dream for many,” said FTC Chairman Deborah Platt Majoras. “But when anticompetitive practices stand in the way, consumers lose. The FTC is committed to working with the industry and policymakers to ensure that competition is not inhibited and that consumers are well-informed about this important marketplace.”

As discussed in the report, the review by the Department and the FTC suggests that, although the real estate industry has undergone a number of substantial changes in recent years – particularly as a result of technological advances such as the Internet – competition in the industry has been hindered as a result of actions taken by some real estate brokers acting through multiple listing services and the National Association of Realtors, state legislatures, and state

real estate commissions. In addition, consumers likely would benefit significantly from additional knowledge about the range of options available in brokerage services and fees. Based on their review, the Department and the FTC recommend the following to help maintain competition and protect consumers in the real estate brokerage industry:

- The Department and the FTC should continue to monitor the cooperative conduct of private associations of real estate brokers and bring enforcement actions in appropriate circumstances. While cooperation among brokers through a multiple listing service can provide consumers with important efficiencies, cooperation used to adopt rules that hinder rivals can be anticompetitive and, as recent agency actions indicate, may violate the antitrust laws.
- The Department and FTC should continue to provide state legislators and industry regulators with information concerning the competitive consequences of state legislation and regulations that threaten to or already do restrict competition and consumer choice in the real estate brokerage industry, and take enforcement action in appropriate circumstances.
- State legislators and industry regulators should consider repealing existing laws, rules and regulations, such as minimum-service and anti-rebate provisions, that limit choice and reduce the ability of new brokerage models (*e.g.*, fee-for-service brokers, discount full-service brokers, virtual office Web site brokers, and broker referral networks) to compete and that do not appear to provide any consumer benefits that would justify such restrictions. They should also avoid enacting such laws, rules and regulations in the future.
- The Department, FTC, and industry regulators should promote consumer understanding of marketplace options. Some consumers may not be aware of the range of alternatives available to them when hiring a real estate broker, including the types of business models available and the negotiability of fees, for both home buyers and sellers, or may not understand the duties owed by their broker. Competition in the real estate brokerage industry would likely be enhanced if consumers had better access to such information.
- The Department, FTC, and industry regulators should assess the feasibility of an empirical study of the real estate brokerage industry. Transaction-level data on commission rates and fees are not publicly available, but broad national aggregate data suggest that commission rates and fees move in tandem with housing prices. Just as a 1983 FTC study provided valuable information about how real estate brokers competed in the late 1970s and early 1980s, a new study examining how transaction-level commission rates and fees vary based on such factors as market conditions, housing prices, and regulation would provide a better understanding of the current state of competition in the real estate brokerage industry.

Copies of the report can be found on the Department of Justice's Web site at

<http://www.usdoj.gov/atr/public/reports/223094.pdf>. Transcripts and written submissions from the workshop are available at <http://www.usdoj.gov/atr/public/workshops/reworkshop.htm>. Individuals seeking more information on the report should contact the Department of Justice's Office of Public Affairs at 202-514-2007.

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